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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Amendment of Part 90 )  
Concerning the Commission's )  
Finder's Preference Rules )

WT Docket No. 96-199

To: The Commission

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**Comments of**  
**Incom Communications Corporation and Narrowband Network Systems**

Incom Communications Corporation ("ICC") and Narrowband Network Systems (the "Network") (collectively Commenters"), by their attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby submit these comments in support of the Commission's proposal to amend Part 90 of the Rules to eliminate the finder's preference program in the 220-222 MHz band. Notice of Proposed Rule Making, released September 27, 1996 ("NPRM").<sup>1</sup>

The Commenters support the Commission's proposed elimination of the finder's preference program in the 220-222 MHz band ("220 MHz") in conjunction with the Commission's proposal to implement geographic area licensing and to utilize

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<sup>1</sup>The Commenters limit their comments to the Commission's proposed elimination of the finder's preference in the 220-222 MHz band and have given no consideration to the proposal to eliminate the finder's preference for Private Land Mobile Radio Services in the 470-512 MHz, 800 MHz and 900 MHz bands.

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competitive bidding to choose among mutually exclusive applications for the service.<sup>2</sup> Under the proposed licensing procedures, continuation of the finder's preference program will hinder the successful development and expansion of the 220 MHz service.

The Commission proposes to adopt a geographic licensing approach for 220 MHz which will give 220 MHz licensees greater flexibility to serve customers and to expand service. Specifically, the Commission proposes to award Phase II 220 MHz licenses to applicants for non-nationwide channels for the 172 Economic Areas ("EA licenses") defined by the Bureau of Economic Analysis in the Department of Commerce and for the five large regions ("Regional licenses"). Third NPRM at ¶ 59. Geographic area licensing will allow 220 MHz licensees to compete more effectively against other wireless services. The Commission proposes to award EA licenses and Regional licenses through competitive bidding procedures similar to those procedures utilized in other services. Third NPRM at ¶ 108. Under the proposed licensing system, an auction-winning licensee could operate several base stations anywhere within its geographic area without having to obtain a separate authorization for each station. Third NPRM at ¶ 59. Commenters agree that this new licensing

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<sup>2</sup>See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-552, Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services, GN Docket No. 93-252, and Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 220-222 MHz, PP Docket No. 93-253, Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking, 11 FCC Rcd 188 (1995) ("Third NPRM").

system would be disrupted by continuing to allow finder's preferences for unused channels in the 220 MHz service.

Unused channels should belong to auction-winning Phase II 220 MHz licensees within their respective geographic areas. If auction winners cannot be assured of receiving all "white space" within a geographic area, then the value of auction licenses is greatly reduced, and 220 MHz would be less competitive with other wireless services. As the Commission points out in the NPRM, allowing the continuation of the finder's preference program would mean that geographic area licensees could lose opportunities to provide uniform service throughout the area. Id. at ¶ 9.

Commenters agree with the Commission that the EA licensees and Regional licensees should have the exclusive right to recover any unused channels in the 220 MHz service. This will give EA licensees and Regional licensees the opportunity to obtain additional channels to serve their geographic area and ensure that the channels do not go unused.

Commenters also believe that continuation of the finder's preference program would make the licenses less attractive to potential bidders. For example, a potential bidder for a particular EA might hesitate to bid if they know that a third party could file a finder's preference and recapture channels that the potential bidder could use to serve the geographic area. Further, bidders need to know the channels available when submitting bids. Bidders must protect incumbent licensees in their geographic areas and should not also be forced to protect potential licensees nor should bidders have to worry that applicants will file finder's preference requests that hinder their

proposed service to the geographic area.

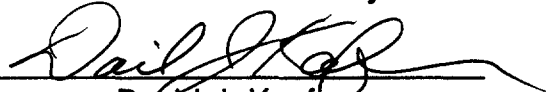
Commenters agree that the Commission should not grant any finder's preference requests currently on file and should cease processing any finder's preference requests pending final action on the proposed rules and in this proceeding. NPRM at ¶ 11, 12. Processing those requests currently on file with the Commission would disrupt the proposed geographic area licensing scheme before it can be implemented. Any requests granted during this proceeding would further encumber the spectrum and make the grant of geographic area licenses less flexible and winning licensees less able to fully serve their geographic area. Applicants who have filed finder's preference requests for 220 MHz service can apply to participate in the auction and obtain a geographic area license through competitive bidding.

## CONCLUSION

The Commission should eliminate the finder's preference program for the 220-222 MHz band and allow EA licensees and Regional licensees the flexibility to fully serve their geographic areas.

Respectfully submitted,

**InCom Communications Corporation  
and Narrowband Network Systems**

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November 18, 1996

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CERTIFICATE OF SERVICE


I, Yvette King, a secretary at the law firm of Brown Nietert & Kaufman, Chartered, do hereby certify that I have caused a true copy of the foregoing "Comments of Incom Communications Corporation and Narrowband Network Systems" to be sent this 18th day of November, 1996 via hand delivery, to the following:

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